

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR 14 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JOSE L.,)	2 CA-JV 2011-0125
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF)	Appellate Procedure
ECONOMIC SECURITY and JOSE L.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18806400

Honorable Javier Chon-Lopez, Judge

AFFIRMED

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Michelle R. Nimmo

Tucson
Attorneys for Appellee
Arizona Department of Economic Security

ESPINOSA, Judge.

¶1 Jose L. appeals from the juvenile court’s order terminating his parental rights to his son, J.L., on the ground of abandonment. *See* A.R.S. § 8-533(B)(1). He argues the evidence was insufficient to support termination on this ground. For the following reasons, we affirm.

¶2 To prevail on its motion to terminate Jose’s parental rights, the Arizona Department of Economic Security (ADES) was required to prove abandonment by clear and convincing evidence and to establish by a preponderance of the evidence that termination was in J.L.’s best interests. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 1, 41, 110 P.3d 1013, 1014, 1022 (2005). On appeal, we view the evidence in the light most favorable to upholding the juvenile court’s order, *Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008), and we will not reverse a termination order for insufficient evidence unless we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard, *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009).

Background

¶3 In September 2008, six-year-old J.L. was living with his mother, Tina G., and Rafael G., the father of his three half-siblings, when ADES’s Child Protective Services (CPS) division took temporary custody of all four children, and ADES filed a petition alleging their dependency. In May 2009, Jose admitted allegations in an amended dependency petition that he had not established paternity of J.L.,¹ had failed to provide for the boy’s financial or emotional needs, had not maintained a relationship with him, and had failed to protect him from Tina’s neglect.

¹Jose was neither married to Tina G. nor listed on J.L.’s birth certificate as the child’s father. *See* A.R.S. § 25-814 (“Presumption of paternity”).

¶4 In March 2010, the juvenile court found the most appropriate permanent case plan for J.L. and his half-siblings was severance and adoption and ordered ADES to file a motion to terminate Jose’s, Tina’s, and Rafael’s parental rights to their respective children. In its motion, ADES alleged that Jose had abandoned J.L., *see* § 8-533(B)(1), and that terminating his parental rights was in J.L.’s best interests.

¶5 After a contested termination hearing, the juvenile court initially denied ADES’s termination motion as to Jose, and ADES appealed that decision on the ground that the court’s ruling had been based on an erroneous application of the law relevant to abandonment. We agreed, vacated the court’s order, and remanded the case for further proceedings. *Ariz. Dep’t of Econ. Sec. v. Jose L.*, No. 2 CA-JV 2010-0102, 11 (memorandum decision filed Feb. 15, 2011).

¶6 On remand, the juvenile court granted ADES’s motion, finding “by clear and convincing evidence that [Jose] abandoned [J.L.] by failing to maintain a normal parental relationship with [him] during most of [his] young life” and also finding termination of Jose’s parental rights would be in J.L.’s best interests. On appeal, Jose argues the court’s determination that he had abandoned J.L. was unsupported by reasonable evidence because he had “persistently asserted his legal rights to re-establish [his] relationship with [J.L.] only to be met with resistance by ADES in so doing.”²

²Jose does not challenge the juvenile court’s finding that termination of his parental rights is in J.L.’s best interests. Accordingly, we do not consider this aspect of the court’s ruling on appeal. *See* Ariz. R. Civ. App. P. 13(a)(5), (6) (appellant’s brief shall contain issues presented for review with argument); Ariz. R. P. Juv. Ct. 106(A) (Rule 13 applies in appeals from juvenile court); *see also Hurd v. Hurd*, 223 Ariz. 48, n.3, 219 P.3d 258, 260 n.3 (App. 2009) (issues not raised properly on appeal waived; relying on Rule 13(a)).

Discussion

¶7 Section 8-533(B)(1) provides that, if in the best interests of the child, termination of parental rights is warranted by a finding “[t]hat the parent has abandoned the child.” According to A.R.S. § 8-531(1),

“[a]bandonment” means the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

¶8 In finding ADES had established this ground for termination, the juvenile court summarized the evidence as follows:

[J.L.] was born in California in October 2002, while [Jose] was incarcerated. During his incarceration, [Jose] had no contact with [Tina] or [J.L.], nor did he seek to establish paternity or provide child support. Following his release in October 2003, [Jose] visited with [J.L.] at the home of Tina . . . and her new boyfriend Rafael At some point [he] stopped visiting, because he felt uncomfortable visiting [J.L.] in [Tina]’s home, but there was no evidence that he sought to have visitation elsewhere, establish his paternity, or provide financial support or gifts for [J.L.] during this time period. Between March 2004 and February 2006, [Tina] and [Rafael] moved away from their home in California and eventually settled in Tucson. [Jose] was incarcerated from August 2004 until sometime in 2007. Even after ADES made contact with [Jose] in January 2009 and asked him to establish paternity, he missed two DNA test[s] in February and March 2009; he finally establish[ed] paternity by affidavit in September 2009, approximately eight months after he was first asked.

Not one, but multiple six-month periods elapsed where [Jose] had failed to maintain a normal parental relationship with [J.L.] through contact, establishment of paternity, child support, or gift. Incarceration is not a justification for a failure to make only minimal or no efforts to support and communicate with a child. *Michael J. [v. Ariz. Dep't of Econ. Sec.]*, 196 Ariz. 246, [¶ 22,] 995 P.2d 682[, 686] (2000). “The burden to act as a parent rests with the parent[,] who should assert his legal rights at the first and every opportunity.” *Id.* [¶ 25.]

¶9 Without challenging the juvenile court’s specific findings, Jose suggests evidence was presented that “rebutts the . . . court’s ruling” that he had abandoned J.L., including Tina’s departure from California without notifying him and her failure to keep him informed of her whereabouts, and ADES’s denial of his requests, during the dependency proceedings, for visitation to “re-establish the relationship,” first on the ground that he had not established paternity and later on the basis that visitation would not be therapeutic for J.L., who had regarded Rafael as his father until he was placed in foster care and was in the process of adjusting to his placement with foster parents. But based on Jose’s own testimony at the termination hearing, he never provided financial support for J.L., did not investigate enforcement of his legal rights until November 2008, when Jose was six years old, and did not establish his paternity until September 2009, nearly nine months after he received notice of the dependency petition.

¶10 The resolution of any conflicts in the evidence “is uniquely the province of the juvenile court as the trier of fact; we do not re-weigh the evidence on review.” *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002). Notwithstanding Jose’s assertions that he had made recent efforts to establish a relationship with J.L., other evidence was more than sufficient to support the court’s finding of abandonment and its termination of his parental rights. As our supreme court has explained, an unwed father must take “immediate and persistent actions” to protect

his parental rights and, if his informal efforts to establish a relationship fail, “he must rapidly turn to legal recourse so that the child may obtain a final placement as quickly as possible.” *In re Pima Cnty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 96-98, 876 P.2d 1121, 1131-33 (1994). This requirement serves the policy of providing children with permanence and stability; an unwed father must “act, and act quickly” to preserve his parental rights so there may be a “prompt determination of where and by whom [a] child is to be raised and nurtured.” *Id.* at 97, 876 P.2d at 1132; *see also In re Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 8, 804 P.2d 730, 737 (1990) (prima facie case of abandonment not “rebutted merely by post-petition attempts to reestablish a parental relationship,” although such efforts may be relevant to child’s best interests).

Disposition

¶11 The juvenile court’s order terminating Jose’s parental rights to J.L. is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge